

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**JUDY A. ARBOGAST,**  
**Plaintiff,**

**vs.**

**CASE NO. 3:07CV28  
(Judge Maxwell)**

**MICHAEL ASTRUE,**  
**Commissioner of Social Security,**  
**Defendant.**

**ORDER SCHEDULING HEARING**

On March 8, 2007, Plaintiff, Judy A. Arbogast, (“Plaintiff”), through her counsel Brock M. Malcolm, filed a Complaint in this Court pursuant to 42 U.S.C. § 405(g), to review a denial of Supplemental Security Income (“SSI”) and Disability Insurance Benefits (“DIB”), under the Social Security Act [Docket Entry 1]. On May 21, 2007, Defendant Michael Astrue, Commissioner of Social Security [“Defendant”], through his counsel, Helen C. Altmeyer, filed his Answer to the Complaint [Docket Entry 7]. On June 20, 2007, Plaintiff filed her Motion for Summary Judgment [Docket Entry 10]. On July 16, 2007, Defendant filed his Motion for Summary Judgment [Docket Entry 12]. This matter has been referred to the undersigned United States Magistrate Judge for a Report and Recommendation to the District Judge. 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Plaintiff filed her current Applications on August 29, 2002, alleging inability to work as of January 9, 2001, due to post-traumatic stress disorder, anxiety, depression, fatigue, arthritis in her back and neck, mitral valve prolapse, carpal tunnel surgery, and a shoulder surgery (R. 81-84). Her claim was denied at the Initial and Reconsideration levels on January 3, 2003, and March 7, 2003, respectively (R. 64, 71). She requested a hearing, which was held on August 11, 2004, before Administrative Law Judge Steven Slahta (R. 462). On November 22, 2004, the ALJ issued his Decision denying benefits, finding “The claimant was not under a ‘disability,’ as defined in the Social

Security Act, at any time though the date of this decision . . . .” (R. 30).

The Court notes that Plaintiff had filed a previous application on November 1, 2001, alleging, as in the present case, disability since January 9, 2001 (see 2:04cv43). On September 12, 2007, the Honorable Robert E. Maxwell, District Judge for the Northern District of West Virginia, found Plaintiff’s condition met the requirements of 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.05(C), and remanded solely for a calculation of benefits. In other words, this Court has already found Plaintiff disabled as of January 9, 2001, the same date she alleges she became disabled in the case presently before the Court. It therefore appears to the undersigned United States Magistrate Judge that the issues in the present case have been mooted by the prior decision of the Court.

Before making any recommendation, however, the undersigned will provide the parties an opportunity to be heard on the matter. It is therefore **ORDERED** that a hearing is scheduled for **Wednesday, November 14, at 10:00 a.m.**, before the undersigned at the **Clarksburg** point of holding court.

The Clerk of the United States Court for the Northern District of West Virginia is directed to provide a true copy of this order to all counsel of record.

DATED: October 24, 2007.

/s *John S. Kaull*  
JOHN S. KAULL  
UNITED STATES MAGISTRATE JUDGE